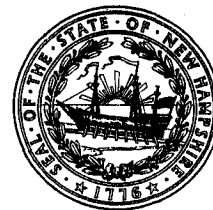




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

November 7, 2005

Bukk G. Carleton
21 Technology Drive – Suite #6
West Lebanon, NH 03784

Re: Docket No. AF 05-054 – MTS Development Corp.

Dear Mr. Carleton:

Enclosed for your records is a copy of the fully executed and accepted Motion to Accept Settlement Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael P. Scafani,
Legal Assistant

cc: Anthony P., Giunta, P.G., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
Lynn Woodard, DES WMD
Tom Beaulieu, DES WMD
Susan Hanamoto, DES WMD

MTS Development Corp.
20 West Park Street, Suite 105
Lebanon, NH 03766

Re: Whipple-Pulsifer Block
2-6 West Park Street, Lebanon, NH
UST ID#0-113312

**ADMINISTRATIVE FINE
AND LICENSE ACTION
No. AF 05-054**

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and MTS Development Corp., parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. MTS Development Corp. ("MTS Development") is the registered facility owner of one underground storage tank ("UST") at the MTS Development Corp. facility ("the Facility"), further identified as UST # 0-113312, located on real property at 2-6 West Park Street, Lebanon, NH ("the Property"). R. Balagur signed the Registration for Underground Storage Tank Systems for the Facility, dated December 9, 2004, as the owner on behalf of MTS Development.
3. On June 17, 2005, the Division issued Notice of Proposed Administrative Fine No. AF 05-054 ("the Notice") to MTS Development seeking fines totaling \$3,400 for violations of New Hampshire Administrative Rules Part Env-Wm 1401.
4. The Notice cited MTS Development for violating Env-Wm 1401.07(c) by failing to display and permanently affix a permit at the Facility. Pursuant to Env-C 607.02(b) the Division sought a fine of \$100.
5. The Notice further cited MTS Development for violating Env-Wm 1401.21(l) by failing to display and permanently affix a certificate bearing the Facility's tank information. Pursuant to Env-C 607.02(b) the Division sought a fine of \$100.
6. The Notice further cited MTS Development for violating Env-Wm 1401.25(c) and (d) by failing to maintain the spill containment device for Tank 1 in good working order and properly install the overfill protection device on Tank 1. Pursuant to Env-C 607.05(j) the Division sought a fine of \$200.

7. The Notice further cited MTS Development for violating Env-Wm 1401.31(a) by failing to maintain leak monitoring equipment and devices in good working order at all times to continuously perform their original design function for Tank 1 and by failing to perform the annual test of the leak monitor. Pursuant to Env-C 607.05(d) the Division sought a fine of \$1,000.
8. The Notice further cited MTS Development for violating Env-Wm 1401.32(j) by failing to repair the cathodic protection system for Tank 1 or permanently close Tank 1. Pursuant to Env-C 607.03(e) the Division sought a fine of \$1,000.
9. The Notice further cited MTS Development for violating Env-Wm 1401.33(b) by failing to install corrosion protection for the piping system of Tank 1. Pursuant to Env-C 607.03(f) the Division sought a fine of \$1,000.
10. In order to settle this matter, the Division and MTS Development have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.
11. Of the proposed fine, in the amount of \$3,400, 20% or \$680 shall be suspended due to this being a one-time unintentional violation. An additional 20% or \$680 shall be suspended due to MTS Development's history of compliance at this Facility. An additional 20% or \$680 shall be suspended due to MTS Development's cooperation in returning the Facility into compliance.
12. The suspended portion of the proposed fine, in the amount of \$2,040 is contingent upon MTS Development maintaining the subject UST Facility in compliance with Env-Wm 1401 for a period of two years from the date of the execution of this Agreement. If MTS Development fails to maintain compliance during the two-year period, the suspended portion of the fine, in the amount of \$2,040 shall become due and payable immediately. If MTS Development maintains compliance for the prescribed two-year period, the suspended portion of the fine shall be waived.
13. MTS Development agrees to pay the remaining \$1,360 upon execution of this Agreement by MTS Development.
14. Payment under Paragraph #13 and any payment that becomes due pursuant to Paragraph #12 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095
15. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

16. By executing this Agreement, MTS Development waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

17. The effective date of this Agreement will be the date on which it is signed by MTS Development, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

18. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

Date

10/18/05

MTS Development Corp.

COPY

Blank G. Carleton III, President
Duly Authorized

Date

11/1/05

DES Waste Management Division

COPY

Anthony P. Giunta, P.G., Director

This Motion to Accept Settlement agreement is granted this 7th day of November, 2005.

COPY

Michael P. Neri, Commissioner
Department of Environmental Services